

This letter discusses the sales tax treatment of purchases and sales of motor vehicles in which funds are channeled through a Qualified Escrow Account. See 86 Ill. Adm. Code 130.1915. (This is a GIL.)

January 4, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 27, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, unnamed herein, we respectfully request a General Information Letter regarding the Illinois Retailers' Occupation Tax ('ROT') and Use Tax ('UT') implications on a 'Like-Kind Exchange' transaction. To the best of the knowledge of the client and BUSINESS the Illinois Department of Revenue ('DOR') has not previously ruled on the same or similar issue for the taxpayer or a predecessor. In addition, it is asserted that the same or similar issue was not previously submitted and withdrawn by the client or BUSINESS prior to the DOR's issuance of a GIL.

In order to facilitate your review of the information necessary to respond to the requested GIL, we have presented the request in the following manner:

- I. Overview and Business Purpose
- II. Form of the Transaction for Federal Tax Purposes
- III. Transactions at Issue for ROT and UT Purposes
- IV. Summary of Important ROT and UT Considerations
- V. Pertinent Authority and Analysis
- VI. GIL Requested

**I. Overview and Business Purpose**

We are requesting a determination regarding the taxability and reporting requirements for ROT and UT purposes, concerning a 'Like-Kind Exchange' transaction. The transaction at issue concerns the typical or traditional purchase, lease and sale of a motor vehicle and those transactions as modified to qualify under Internal Revenue Code ('IRC') Section 1031. The Internal Revenue Service has ruled that exchanges of rental property by a corporation through an intermediary can qualify under IRC Section

1031, as tax-free like-kind exchanges, for federal income tax purposes.

Leasing companies historically operate with 'thin margins' or very limited gross profit margins. In order to be economically competitive within the market place, leasing companies must use every opportunity to reduce operating costs. One method used to postpone the gain recognition that otherwise would be realized for federal income tax purposes, is through use of a like-kind exchange. The savings realized will ultimately allow a leasing company to remain competitive, by passing along the reduced operating costs in the form of reduced lease payments. However, for ROT and UT purposes, the nature and compliance of the transaction will remain unchanged.

During the course of a leasing transaction, events can be segmented into three categories., The acquisition of the property by the lessor, the term of the lease and finally the disposition of the property, by the lessor at the conclusion of the lease term. Simply stated, the lease is born, it lives for a period of time and it terminates. The complexities of IRC Section 1031 only impact the lease transaction(s) at issue when the motor vehicle is (a) sold at the conclusion of the lease and (b) when a new or replacement vehicle is acquired.

## **II. Form of the Transaction for Federal Tax Purposes**

The proposed IRC Section 1031 transaction does not impact the relationship between the lessor and lessee during the term of the lease. The lessee will continue to remit all payments during the term of the lease to the lessor. The lease payments will continue as they currently exist, and the lessor will continue to issue invoices to the lessee. The only change in business operation for the proposed IRC Section 1031 transaction is upon (1) the conclusion of the lease (i.e., sale of the motor vehicle) or (2) the purchase of a new motor vehicle by the lessor.

### **Sale of the Motor Vehicle -- Relinquished Property**

The Taxpayer leases tangible personal property (i.e., motor vehicles). On termination of the lease, the lessee has the option of purchasing the property ('Relinquished Property'). At that time, the property is 'assigned' to an intermediary to be sold in accordance with the Taxpayer's directions and instructions either (1) to the interested lessee or (2) to another party (e.g. dealer) if the lessee does not choose to purchase the property. In the first instance, the transaction would be assumed taxable for ROT and UT purposes (e.g., sale to consumer). In the second instance, the transaction would be assumed not taxable, for ROT and UT purposes (e.g., resale to a dealer). The Taxpayer controls the disposition of the relinquished property, and the title to the property is

transferred directly by the Taxpayer to the purchaser. In addition, the proceeds from the sale are received in an escrow account.

The role of the Qualified Intermediary is to provide a service to the Taxpayer, for which they receive a commission. The Taxpayer directs the sale of the relinquished property and the receipt of payment for such, to the escrow account. The title for the motor vehicle is transferred directly between the Taxpayer and the Purchaser.

#### Purchase of a New Motor Vehicle -- Replacement Property

The Taxpayer also purchases and acquires 'Replacement Property' through the intermediary. Exchanges of relinquished property for replacement property are identified to the intermediary within 45 days of the sale of the relinquished property. If an exchange does not occur within the shorter of (1) 180 days or (2) the due date, including extensions, of the Taxpayer's federal income tax return, the Taxpayer will recognize gain on the exchange, for federal income tax purposes.

As above in the sale or relinquishment of the property, the role of the Qualified Intermediary is to provide a service to the Taxpayer, for which they receive a commission. The Internal Revenue Service has stated that the role of the intermediary in the purchase of property, that was not replacement property, was deemed 'routine financial services' under Reg. Sec. 1.1031(k)-1(k)(2)(ii). Also, such services would not disqualify the intermediary from being a qualified intermediary, in connection with the like-kind exchanges. The Taxpayer directs the acquisition of the replacement property and the payment for such from the escrow account. The title for the motor vehicle is transferred directly between the Dealer and the Taxpayer.

### **III. Transactions at Issue for ROT and UT Purposes**

#### **1. Sale of Motor Vehicle to a Taxable Individual**

As summarized in Scenario I (attached), an individual may exercise an option to purchase the leased vehicle at the conclusion of the lease term. By way of comparison, in a typical taxable scenario (not an IRC Section 1031 transaction), the Taxpayer (i.e., lessor (a) sells (e.g., purchase price plus tax), (b) collects and (c) remits the appropriate ROT and UT on the transaction, in exchange for (d) the title that is transferred to the lessee. In a qualified IRC Section 1031 transaction, the Taxpayer will continue to (a) sell and (c) remit appropriate ROT and UT, in exchange for (d) the title to the motor vehicle. However, the individual will be directed to (b) remit their payment to a 'Qualified Escrow Account.' For ROT and UT purposes, the Taxpayer will continue to document, report and

remit all taxes due on the transaction. The reporting of the transaction will continue to follow the flow of documentation at the Illinois Secretary of State. The attachment 'Scenario I' noted above, graphically depicts the transaction.

2. Nontaxable Sale of Motor Vehicle to a Dealer

In Scenario II (attached), the lessor, at the conclusion of the lease sells the used motor vehicle to a dealer or another nontaxable reseller (e.g., dealer). By way of comparison, in a typical nontaxable scenario (not an IRC Section 1031 transaction) the Taxpayer (i.e., lessor) (a) sells (e.g., purchase price without tax), (b) receives a resale exemption, and (c) does not remit ROT and UT on the transaction, in exchange for (d) the title to the motor vehicle. In a qualified IRC Section 1031 transaction, the Taxpayer will continue to (b) receive a resale certificate and (c) not remit ROT and UT, in exchange for (d) the title to the motor vehicle. However, as noted above, the Dealer will be directed to remit their payment to a 'Qualified Escrow Account.' For ROT and UT purposes, the Taxpayer will continue to document and report the non-taxability of the transaction. The reporting of the transaction will continue to follow the flow of documentation at the Secretary of State. The attachment, 'Scenario II' noted above, graphically depicts the transaction.

3. Purchase of a Motor Vehicle for Leasing Purposes

In a situation where the Lessor purchases tangible personal property (i.e., motor vehicles) and is considered the consumer for ROT and UT purposes, the lessor pays tax based on the selling price of the property, as statutorily defined. In Scenarios III-A and III-B (attached), typically the Taxpayer (i.e., Lessor) (a) purchases the vehicle from the seller, (b) pays tax on the selling price and (c) receives title for the motor vehicle. In an IRC Section 1031 transaction, the Taxpayer will direct the Qualified Intermediary to make payment from the Qualified Escrow Account to the Seller. The Taxpayer will continue to (b) pay tax upon the selling price and (c) receive title. The subsequent lease of the motor vehicle will remain unchanged to the lessor and lessee.

**IV. Summary of Important ROT and UT Considerations**

The proposed transaction does not seek to reduce or eliminate any ROT and UT that is currently due and payable. The Taxpayer seeks to continue its current business practices, without an administrative change for its ROT and UT compliance effort. For ROT and UT tax purposes, the taxable event(s) follows the transfer of the motor vehicle title, between the buyer and seller. The transfer of the case from or to a Qualified Escrow Account for IRC Section 1031 purposes does not change current sales and use tax reporting practices.

Scenario I: Sale of Motor Vehicle to Individual

*Pertinent Authority*

In general, the ROT and UT is imposed on sales of motor vehicles by a retailer. 35 ILCS 105/10; 35 ILCS 120/3. 'Retailer' means and includes every person engaged in the business of making sales at retail. 35 ILCS 105/2. 'Sale at retail' means any transfer of the ownership of or title to tangible personal property for a valuable consideration to a purchaser. The transfer must be for the purpose of use or consumption and not for the purpose of resale in any form as tangible personal property. 35 ILCS 120/1; 35 ILCS 105/2.

'Selling price' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, services and property. However, the selling price does not include the value of or credit given for traded-in tangible personal property of like-kind and character as the property sold. 35 ILCS 105/2.

All retailers of motor vehicles are required to comply with the tax collection, remittance and reporting requirements. Retail sales of motor vehicles which are required to be registered or titled with the Secretary of State must be reported by the retailer. A separate transaction return must be prepared for each sale and filed with the Illinois Department of Revenue ('DOR'). 35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; Ill. Admin. Code Sec. 130.540(b). An exception to this filing requirement exists for sales for resale, which is discussed in Scenario II below.

The retailer must collect the tax from the purchaser and remit the tax (or evidence that the sale was not taxable) to the DOR with each return filed. 35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; Ill. Admin. Code Sec. 130.540(b). The DOR will issue a UT receipt or certificate of exemption in the purchaser's name. In order to obtain a certificate of title or registration, the UT receipt or certificate of exemption must be submitted to the Secretary of State. 35 ILCS 120/3; Ill. Admin. Code Sec. 150.715.

It should be noted that the purchaser may remit the tax directly to the DOR, as opposed to the retailer, in order to expedite the registration and titling of the motor vehicle. This is permissible when the purchaser wants the payment of tax made to the DOR sooner than the retailer is willing or required to file the return and remit the tax. The purchaser must certify to the fact of such delay by the retailer and submit the transaction reporting return and

tax directly to the DOR. The DOR will issue the UT receipt to the purchaser, and the transaction reporting return and tax remittance will be credited to the retailer's account with the DOR. However, the retailer will not receive credit for this discount which is provided to retailers as reimbursement for expenses incurred in the tax collection, remittance and compliance process. 35 ILCS 120/3.

We have been unable to locate any authorities contrary to the Taxpayer's views, and to the best of our knowledge, none exist.

### *Analysis*

An individual's exercise of a purchase option at the end of a lease, resulting in the lessee's acquisition of the leased vehicle, is generally a sale at retail by a retailer subject to ROT and UT. The Taxpayer making the sale is required to (a) bill the tax to the purchaser and (b) remit the tax to the state. The purchaser must pay the ROT or UT as a prerequisite to obtaining a registration certificate from the Secretary of State.

In an IRC Section 1031 like-kind exchange, the sale of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer (i.e., Lessor) and the individual (i.e., Lessee) who purchases the vehicle for use or consumption. However, as depicted in Scenario I, the payment of the purchase price and tax must be submitted by the purchaser to the Qualified Escrow Account for deposit by the Qualified Intermediary. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC Section 1031. In this scenario, the Qualified Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC Section 1031 like-kind exchange treatment.

The actual sale at retail and transfer of title, possession or control of the motor vehicle is made by the Taxpayer to the individual. The Taxpayer is a retailer engaged in the business of making sales at retail. However, the Qualified Intermediary is not a retailer and never has title or possession of the motor vehicle. The Qualified Intermediary's involvement is primarily limited to the receipt, management and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.

In addition, the Taxpayer receives valuable consideration, through its vested interest and ownership rights in the Qualified Escrow Account, equal to the selling price as statutorily defined and paid by the individual. The

Taxpayer's receipt of valuable consideration in exchange for the transfer of title or possession provides further evidence that the sale at retail is between the Taxpayer and the individual. Although the purchaser remits the consideration to the Qualified Intermediary, the funds are deposited into the Qualified Escrow Account held in interest for the Taxpayer. Ownership rights in the Qualified Escrow Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account, as well as its receipt of the Form 1099 issued for income tax purposes on an annual basis.

Finally, the title of the motor vehicle passes directly from the Taxpayer to the purchaser upon the sale of the vehicle. The ROT and UT imposition and reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the sale at retail and transfer of title is required to bill tax to the purchaser for remittance to the state. The purchaser's payment of tax upon the exercise of the purchase option, based on the selling price as statutorily defined, will satisfy the Secretary of State's requirements to obtain a registration certificate.

#### *Conclusion*

The Taxpayer should continue to bill the tax to the purchaser and remit the tax to the state. The tax will continue to be based upon the selling price as defined by statute and paid by the purchaser. The Qualified Intermediary's services, as defined under IRC Section 1031, will have no impact on the ROT and UT imposition or compliance on the sale of the motor vehicle by the Taxpayer to the individual purchaser. The tax imposition will be the same whether the purchaser submits payment directly to the Taxpayer, as in the past, or to the proposed Taxpayer's Qualified Escrow Account, managed by the Qualified Intermediary.

#### Scenario II: Sale of Motor Vehicle to Nontaxable Dealer

##### *Pertinent Authority*

A sale of property for purposes of resale is exempt from the ROT and UT. The term 'sale at retail' specifically excludes sales to a purchaser for purposes of resale. 35 ILCS 120/1; 35 ILCS 105/2; Ill. Admin. Code Sec. 130.120(c); Ill. Admin. Code Sec. 130.210; Ill. Admin. Code Sec. 150.201. A sale for resale is not subject to tax if the purchaser presents a resale certificate to the seller. 35 ILCS 120/2c; Ill. Admin. Code Sec. 130.1405. A blanket certificate of resale may be accepted by a seller from a

purchaser whose purchases are exclusively for resale. Ill. Admin. Code Sec. 130.1405.

As noted in Scenario I above, a separate return must be filed to report each retail sale of motor vehicles that are required to be registered with the Secretary of State. 35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; Ill. Admin. Code Sec. 130.540(b). However, if the retailer of motor vehicles transfers more than one motor vehicle to another retailer for the purpose of resale, the seller for resale may report the transfer of all motor vehicles to the DOR on one return. 35 ILCS 120/3.

We have been unable to locate any authorities contrary to the Taxpayer's views, and to the best of our knowledge, none exist.

#### *Analysis*

When an individual declines to exercise the purchase option at the end of a lease, the motor vehicle is typically sold by the Taxpayer to a third party, such as a dealer. The purchase of the motor vehicle by the dealer for purposes of resale is a nontaxable sale, which is specifically excluded from the definition of 'sale at retail.' As a result, the Taxpayer making the sale must (a) obtain a resale exemption certificate from the dealer, (b) bill the dealer for the purchase price without tax, and (c) transfer the title to the dealer.

In an IRC Section 1031 like-kind exchange, the sale of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer and the dealer. Similar to Scenario I, the payment of the purchase price must be submitted by the dealer to the Qualified Intermediary for deposit into the Qualified Escrow Account. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC Section 1031. In this scenario, the Qualified Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC Section 1031 like-kind exchange treatment.

The actual sale for resale and transfer of title, possession and control of the motor vehicle is made by the Taxpayer to the dealer. The Qualified Intermediary never has title or possession of the motor vehicle. The Qualified Intermediary's involvement is primarily limited to the receipt, management and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.



In addition, the Taxpayer receives valuable consideration, through its vested interest and ownership rights in the Qualified Escrow Account, equal to the purchase price paid by the dealer. The Taxpayer's receipt of consideration in exchange for the transfer of title and possession provides further evidence that the sale for resale is between the Taxpayer and the dealer. Although the dealer remits the consideration to the Qualified Intermediary, the funds are deposited into the Qualified Escrow Account held in interest for the Taxpayer. Ownership rights in the Qualified Escrow Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account, as well as its receipt of the Form 1099 issued for income tax purposes on an annual basis.

Finally, the title of the motor vehicle passes directly from the Taxpayer to the dealer upon the sale of the vehicle. The ROT and UT tax reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the nontaxable sale for resale to the dealer and executing the transfer of title is required to obtain a resale exemption certificate from the dealer. The Taxpayer would also be responsible for reporting the nontaxable sale for resale on the appropriate tax return filed with the state.

#### *Conclusion*

The Taxpayer should continue to obtain a resale exemption certificate from the dealer. ROT and UT is not due on a nontaxable sale for resale and no remittance of tax is due to the state. The Qualified Intermediary's services, as defined under IRC Section 1031, will have no impact on the ROT and UT imposition or reporting requirements for the sale of the motor vehicle by the Taxpayer to the dealer. The tax implications, including the collection of a resale exemption certificate, will be the same whether the dealer submits payment directly to the Taxpayer, as in the past or to the proposed Taxpayer's Qualified Escrow Account, managed by the Qualified Intermediary.

#### Scenario III: Purchase of a Motor Vehicle for Leasing Purposes

##### *Pertinent Authority*

The sale of tangible personal property to purchasers who will lease such property for more than one year is a retail sale subject to ROT. Ill. Admin. Code Sec. 130.220. The lessor is the user of the property and is subject to the UT upon the purchase of the tangible personal property. Ill. Admin. Code Sec. 130.2010(b). An exception exists for the sale of automobiles to an automobile renter for use as

rentals under lease terms of one year or less. Ill. Admin. Code Sec. 130.220.

As a taxable sale at retail, the seller must collect the tax from the purchaser/lessor and remit the tax to the DOR. 35 ILCS 120/3; 35 ILCS 105/9; 35 ILCS 105/10; Ill. Admin. Code Sec. 130.540(b). The DOR will issue a UT receipt in the purchaser's name. 35 ILCS 120/3; Ill. Admin. Code Sec. 150.715.

It should be noted that the purchaser may remit the tax directly to the DOR, as opposed to the seller, in order to expedite the registration and titling of the motor vehicle. This is permissible when the purchaser wants the payment of tax made to the DOR sooner than the seller is willing or required to file the return and remit the tax. The purchaser must certify to the fact of such delay by the seller and submit the transaction reporting return and tax directly to the DOR. The DOR will issue the UT receipt to the purchaser, and the transaction reporting return and tax remittance will be credited to the seller's account with the DOR. 35 ILCS 120/3.

The lease of tangible personal property to the lessee is generally not subject to ROT or UT. Ill. Admin. Code Sec. 130.2010; Ill. Admin. Code Sec. 150.305(e). The lease of automobiles is not considered a sale of tangible personal property to a purchaser for use or consumption within the meaning of the ROT. Therefore, the lessor is not required to remit ROT measured by the gross receipts of the lease. Ill. Admin. Code Sec. 130.2010(b). It is understood that the tax treatment of rentals for periods of one year or less differs from that of leases. However, the tax treatment of rentals for periods of one year or less are beyond the scope of this GIL request.

We have been unable to locate any authorities contrary to the Taxpayer's views, and to the best of our knowledge, none exist.

#### *Analysis*

In Scenario III, the Taxpayer purchases motor vehicles from the seller for purposes of leasing to individuals. Upon payment of consideration to the seller, the Taxpayer will receive title to the motor vehicles. Such purchases are considered sales at retail subject to UT. However, the Taxpayer may either pay UT to the seller or submit the tax directly to the state, provided the seller is not willing or not required to remit the tax within the time desired by the purchaser. The total UT is based on the selling price and will be calculated according to the statutory

requirements. It should be noted that the exact tax calculation is beyond the scope of the request, which pertains to the Taxpayer's responsibility to bill and remit the tax, as opposed to the Qualified Intermediary.

In an IRC Section 1031 like-kind exchange, the purchase of the motor vehicle, which includes the transfer of title, will occur directly between the Taxpayer and the seller. However, as depicted in the exhibit 'Scenario III,' the Taxpayer's payment to the seller will be withdrawn from the Qualified Escrow Account and submitted to the seller by the Qualified Intermediary. This payment procedure is required in order to qualify for the federal income tax deferred gain treatment under IRC Section 1031. In this scenario, the Qualified Intermediary is merely acting as a third party providing a necessary service to enable the Taxpayer to obtain IRC Section 1031 like-kind exchange treatment.

The actual purchase of the motor vehicle and transfer of title, possession and/or control is made by the seller to the Taxpayer. The Qualified Intermediary never has title or possession of the motor vehicle. The Qualified Intermediary's involvement is primarily limited to the receipt, management and subsequent distribution of funds obtained from the sale and purchase of motor vehicles.

In addition, the seller receives valuable consideration, through its vested interest and ownership rights in the Qualified Escrow Account, equal to the purchase price paid by the Taxpayer. The Taxpayer's payment of consideration in exchange for the title to the motor vehicle provides further evidence that the retail sale is between the Taxpayer and the seller. Although the Qualified Intermediary remits the consideration to the seller, the funds are disbursed from the Qualified Escrow Account, which is held in interest for the Taxpayer. Ownership rights in the Qualified Escrow Account are evidenced by the Taxpayer's receipt of the interest income earned on the funds in the Account, as well as its receipt of the Form 1099 issued for income tax purposes on an annual basis.

Finally, the title of the motor vehicle passes directly from the seller to the Taxpayer upon the purchase of the vehicle. The ROT and UT imposition and reporting requirements should also follow the legal passage of title. In other words, the Taxpayer making the purchase and receiving the title is required to pay UT on the motor vehicle, which is purchased for purposes of leasing.

*Conclusion*

The Taxpayer should continue to pay tax (1) to the seller or (2) directly to the state upon the purchase of the motor vehicles for purposes of leasing. The Taxpayer (i.e., lessor) is considered the end user of the property, and the transaction is a sale at retail subject to UT. The Qualified Intermediary's services, as defined under IRC Section 1031, will have no impact on the ROT and UT imposition on the Taxpayer's purchase of the motor vehicle. The tax imposition will be the same whether the Taxpayer submits payment directly to the seller, as in the past, or the Taxpayer directs the Qualified Intermediary to remit payment from the proposed Taxpayer's Qualified Escrow Account.

#### **VI. GIL Requested**

Based upon the above statements, please confirm our understanding of the following:

1. The taxable sale of a motor vehicle at the conclusion of the lease (e.g., sale to the lessee) is a transaction for ROT and UT purposes between the Taxpayer and the customer. The Taxpayer would be the party responsible for remittance of the appropriate ROT and UT to the state of Illinois. The required IRC Section 1031 payment to the Qualified Escrow Account, managed by a Qualified Intermediary, does not change the billing and payment process of the Taxpayer.
2. The nontaxable sale of a motor vehicle at the conclusion of the lease (e.g., sale to a Dealer) is a transaction for ROT and UT purposes between the Taxpayer and the 'Dealer.' The required IRC Section 1031 payment to the Qualified Escrow Account, managed by a Qualified Intermediary, does not change the exchange of the motor vehicle title for a valid Sale for Resale Exemption documentation, between the Buyer (i.e., Dealer) and the Seller (i.e., Lessor or Taxpayer).
3. The taxable purchase of a new motor vehicle (i.e., Replacement Property) for leasing operations is a transaction, for ROT and UT purposes, between the Taxpayer and the 'Dealer.' The required IRC Section 1031 payment from the Escrow Account, does not change the exchange of the motor vehicle title for the purchase price and the appropriate amount of tax payable to the vendor or state. The fact that a Qualified Intermediary manages the Qualified Escrow Account does not change the issue that the transaction is between the Buyer (i.e., Taxpayer) and the Seller (i.e., Dealer or Vendor).

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Finally, it should be noted that rulings are also being requested in ten other states. The conclusions requested in the rulings are

identical to those set forth above, with the exception of minor modifications for conformity with the various state's statutory requirements (e.g., tax treatment of property acquired for leasing purposes). One state has already responded to the ruling request, providing written confirmation that the conclusions are correct. In addition, verbal discussions have been held with representatives of those states that have not yet issued rulings. The representatives of each state have verbally confirmed our analysis and conclusions. Most of these states also indicated that the issuance of a non-binding ruling will be expedited.

As you review the request, I will be happy to answer any questions you may have or provide clarification of any of the facts, if necessary to enable the rendering of an opinion. If a favorable GIL is expected, anything that can be done to expedite the process would be most appreciated. If you have any questions or require additional information, please do not hesitate to contact me at ####.

It is our understanding that "Taxpayer" purchases vehicles directly from dealers and sells vehicles directly to dealers or to purchasers. "Taxpayer's" identity is disclosed to the dealers and purchasers in compliance with the rules set forth at 86 Ill. Adm. Code 130.1915. The funds for such purchases and sales are channeled through a Qualified Escrow Account. The Qualified Intermediary performs a financial service for "Taxpayer," and is paid a commission for its services, but is not in the business of selling motor vehicles at retail and never takes title to any of the motor vehicles being purchased or sold. As long as this is the case, we agree that the transactions are between "Taxpayer" and the dealers and purchasers. The channeling of funds through the Qualified Escrow Account, managed by the Qualified Intermediary does not change the Retailers' Occupation Tax and Use Tax obligations of "Taxpayer."

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Encl.